

Chapter 120

(Senate Bill 167)

AN ACT concerning

Maryland Insurance Administration – Enforcement Authority – Payment of Claims

FOR the purpose of authorizing the Maryland Insurance Commissioner to require an insurer that holds a certificate of authority to fulfill the obligations under the holder's policies or contracts or pay a claim or an amount due under an insurance policy or contract instead of, or in addition to, suspending or revoking the certificate; authorizing the Commissioner, on a finding of a violation of certain provisions of law, to require an insurer, a nonprofit health service plan, or a health maintenance organization to provide to a claimant a payment that has been improperly denied that has been determined to be denied in violation of certain provisions of law; and generally relating to insurance and the enforcement authority of the Maryland Insurance Commissioner.

BY repealing and reenacting, with amendments,

Article – Insurance

Section 4–113 and 27–305

Annotated Code of Maryland

(2017 Replacement Volume and 2021 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
That the Laws of Maryland read as follows:

Article – Insurance

4–113.

(a) The Commissioner shall deny a certificate of authority to an applicant or refuse to renew, suspend, or revoke a certificate of authority if:

- (1) the action is required by any provision of this article;
- (2) the insurer no longer meets the requirements for the certificate of authority because of a deficiency in assets or any other reason;
- (3) the business of the insurer is fraudulently conducted;
- (4) the insurer is insolvent, or its assets are not sufficient for carrying on its business;
- (5) the insurer fails to pay taxes on premiums required under this article;

(6) the insurer willfully fails to provide the Commissioner with required information about medical malpractice insurance issued by the insurer in this State or any other state;

(7) the issuance or renewal of a certificate of authority is contrary to the public interest;

(8) the Commissioner finds that the principal management personnel of the insurer is:

(i) untrustworthy or not of good character; or

(ii) so lacking in insurer managerial experience as to make the proposed operation hazardous to the insurance-buying public or to the insurer's stockholders; or

(9) the Commissioner has good reason to believe that the insurer is affiliated, directly or indirectly, through ownership, control, management, reinsurance transactions, or other insurance or business relations with a person whose business operations are or have been marked by the manipulation of assets, accounts, or reinsurance or by bad faith, to the detriment of insureds, stockholders, or creditors.

(b) The Commissioner may deny a certificate of authority to an applicant or, subject to the hearing provisions of Title 2 of this article, refuse to renew, suspend, or revoke a certificate of authority if the applicant or holder of the certificate of authority:

(1) violates any provision of this article other than one that provides for mandatory denial, refusal to renew, suspension, or revocation for its violation;

(2) knowingly fails to comply with a regulation or order of the Commissioner;

(3) is found by the Commissioner to be in unsound condition or in a condition that renders further transaction of insurance business hazardous to the insurer's policyholders or the public;

(4) is engaged in writing policies in a jurisdiction in which it operates on a premium basis that the Commissioner finds to be insufficient, insecure, or impracticable so as to endanger the solvency of the insurer;

(5) refuses or delays payment of amounts due claimants without just cause;

(6) refuses to be examined or to produce its accounts, records, or files for examination by the Commissioner when required;

(7) refuses to provide additional information that the Commissioner considers advisable in considering an application for renewal of the certificate of authority;

(8) fails to pay a final judgment against it in the State within 30 days after the judgment becomes final;

(9) is affiliated with and under the same general management or interlocking directorate or ownership as another insurer that transacts direct insurance in the State without having a certificate of authority to do so, except as allowed to a surplus lines insurer under Title 3, Subtitle 3 of this article;

(10) is found by the Commissioner to have participated, with or without the knowledge of an insurance producer, in selling motor vehicle insurance without an actual intent to sell the insurance, as evidenced by a persistent pattern of filing certificates of insurance together with or closely followed by cancellation notices for the insurance;

(11) except as allowed under § 10–103(c) of this article, is found by the Commissioner to have knowingly participated with a person, acting as an insurance producer, that does not have an appointment from the insurer in accepting insurance contracts that the person has sold, solicited, or negotiated, if committed with sufficient frequency to indicate a general business practice;

(12) has had a certificate of authority revoked or suspended by the insurance regulatory authority of another state;

(13) has violated the provisions of Title 6.5 of the State Government Article;

(14) fails to provide to the Commissioner or an insurance producer any information required by § 10–118 of this article regarding the termination of an appointment of the insurance producer; or

(15) in providing information required by or provided pursuant to § 10–118 of this article regarding the termination of an appointment of an insurance producer, makes an inaccurate statement with actual malice.

(c) (1) On refusal to renew, suspension, or revocation of an insurer's certificate of authority, the Commissioner immediately shall notify:

(i) the insurer; and

(ii) each insurance producer of the insurer in the state of record in the office of the Commissioner.

(2) The refusal to renew, revocation, or suspension of a certificate of authority automatically suspends or revokes the appointment of each insurance producer of the insurer in the State.

(3) The Commissioner shall state in the notice to each insurance producer under paragraph (1) of this subsection that the appointment of the insurance producer has been suspended or revoked.

(4) The Commissioner may publish notice of the revocation of a certificate of authority in a newspaper published in the State.

(d) Instead of or in addition to suspending or revoking a certificate of authority, the Commissioner may:

(1) impose on the holder a penalty of not less than \$100 but not more than \$125,000 for each violation of this article; and

(2) require the holder to make restitution to any person who has suffered financial injury because of the violation of this article **INCLUDING REQUIRING THE HOLDER TO:**

(I) FULFILL ANY OBLIGATION UNDER THE POLICIES OR CONTRACTS OF THE HOLDER THAT THE HOLDER FAILED TO FULFILL IN VIOLATION OF THIS ARTICLE; OR

(II) PAY A CLAIM OR AN AMOUNT DUE UNDER AN INSURANCE POLICY OR CONTRACT NOT PAID IN VIOLATION OF THIS ARTICLE.

(e) The Commissioner shall adopt regulations to:

(1) establish standards for the imposition of a penalty under subsection (d) of this section; and

(2) carry out the provisions of subsection (b)(11) of this section.

27-305.

(a) The Commissioner may impose a penalty:

(1) not exceeding \$2,500 for each violation of § 27-303 of this subtitle or a regulation adopted under § 27-303 of this subtitle; and

(2) not exceeding \$125,000 for each violation of § 27-303(9) of this subtitle or a regulation adopted under § 27-303(9) of this subtitle.

(b) The penalty for a violation of § 27-304 of this subtitle is as provided in §§ 1-301, 4-113, and 4-114 of this article and § 27-103 of this title.

(c) (1) On finding a violation of this subtitle, the Commissioner may require an insurer, nonprofit health service plan, or health maintenance organization to:

(I) make restitution to each claimant who has suffered actual economic damage because of the violation; **OR**

(II) **PROVIDE TO A CLAIMANT A PAYMENT THAT HAS BEEN DENIED IMPROPERLY THAT HAS BEEN DETERMINED TO BE DENIED IN VIOLATION OF THIS SUBTITLE.**

(2) Subject to paragraph (3) of this subsection, restitution may not exceed the amount of actual economic damage sustained, subject to the limits of any applicable policy.

(3) For a violation of § 27-303(9) of this subtitle, the Commissioner may require restitution to an insured for the following:

(i) actual damages, which actual damages may not exceed the limits of any applicable policy;

(ii) expenses and litigation costs incurred by the insured in pursuing an administrative complaint under § 27-303(9) of this subtitle, including reasonable attorney's fees; and

(iii) interest on all actual damages, expenses, and litigation costs incurred by the insured computed:

1. at the rate allowed under § 11-107(a) of the Courts Article; and

2. from the date on which the insured's claim would have been paid if the insurer acted in good faith.

(4) The amount of attorney's fees recovered from an insurer under paragraph (3) of this subsection may not exceed one-third of the actual damages recovered.

SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that Section 1 of this Act shall be construed to be clarifying only and not to grant the Maryland Insurance Commissioner any additional authority beyond what is provided by the Insurance Article as of September 30, 2022.

SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2022.

Approved by the Governor, April 12, 2022.